

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1402 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

KUBRABIBI W/O ABDUL LATIF GANIMIYA

Versus

URBAN LAND TRIBUNAL AND EX - OFFICIO SECRETARY

Appearance:

MR KK TRIVEDI for Petitioners

MR TH SOMPURA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/07/98

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. By this petition under Article 226 of the Constitution, the petitioners challenge the judgment and order dated 19.1.1998 passed by the Urban Land Tribunal

under Section 33 of the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act' for short), confirming the order dated 16.10.1996 passed by the Competent Authority and Deputy Collector, ULC, Surat, declaring that the petitioners hold excess vacant land to the extent of 15742 sq.mtrs.

3. Since the lands in question were not in the agricultural zone as per the ULC Master Plan, the petitioners had not filled in any form under the Act. However, thereafter with effect from 12th August 1988, the Government had declared that the Master Plan prepared by the respective Urban Development authorities will be adopted as the Master Plan under the ULC Act.

3.1 According to the petitioners, the land admeasuring 1632 sq.mtrs. in Block No.64 has always been in the agricultural zone of the ULC Master Plan as well as SUDA Master Plan and, therefore, the said land was never includible in the holding of the petitioners under the Act.

3.2 In the Master Plan of SUDA, the petitioners' land bearing Survey No. 194, Block No.174, admeasuring 7610 sq.mtrs. was included in the residential zone.

3.3 In view of the above, petitioner no.2 filled in the Form under Section 6 of the Act on 18.9.1991 (Annexure.C to the petition). In Column no.5 of the said form, the names of other co-owners, in all ten, who are heirs of late Abdul Latif Gani Miya are mentioned and, they have claimed to be the co-owners of the property. The competent authority held that the petitioners were entitled to only one unit, as petitioner no.2 had not given all the necessary particulars about the birth dates of the other co-owners. Therefore, by order dated 16.10.1996, the competent authority declared in all 15,742 sq.mtrs. of excess vacant land.

3.4 In the appeal preferred before the Urban Land Tribunal, the petitioners gave all the particulars including the birth dates of the co-owners and other details. However, the Tribunal did not consider the said material on the ground that the necessary material was not produced before the competent authority. It is on that ground that the Tribunal refused to consider the material produced before the Tribunal.

4. Mr.Trivedi for the petitioners submitted that although the form indicated other co-owners had interest in the land and their names and age were mentioned in the

form, the competent authority ought to have given notices to the other co-owners. Since the form had already indicated that they were all major, the Tribunal ought to have considered the material produced before it in support of the petitioner's case. Moreover land bearing Block No.64 has always been in the agriculture zone. Hence there was no question of suppression.

5. Having heard learned Counsel for the petitioners and learned AGP Mr.Sompura for the respondents, it appears to the Court that in view of the facts and circumstances of the case, it would be just and proper to set aside the impugned orders and to remand the matter to the competent authority for permitting the petitioners to produce all the material on record including the particulars about the birth dates of the co-owners. While setting aside the aforesaid two orders, it would be necessary to impose a condition on the petitioners that they shall pay the costs of these proceedings to the respondents which are quantified at Rs.10,000/-, failing which the petition shall stand dismissed.

6. Accordingly, the petition is partly allowed, on condition that the petitioners pay to respondent no.2 the costs of these proceedings which are quantified at Rs.10,000/- (Rupees Ten Thousand only), the impugned orders dated 16.10.1996 passed by the competent authority and confirmed by the Urban Land Tribunal on 19.1.1998 are set aside and the matter is remanded to the competent authority, ULC, Surat, for permitting the petitioners to produce such material as the petitioners consider necessary and thereafter after giving the petitioners an opportunity of being heard, the competent authority shall decide the matter in accordance with law.

7. Learned Counsel for the petitioners states that the petitioners shall co-operate with the authorities for expeditious disposal of the matter and on that assurance, it is directed that the competent authority shall decide the matter in accordance with law within three months from the date of receipt of a certified copy of this order.

8. In case of failure on the part of the petitioners to pay the costs of these proceedings as aforesaid, the petition shall stand dismissed.

9. Rule is made absolute to the aforesaid extent only with costs quantified at Rs.1,000/- which shall be paid by the petitioners to respondent no.2 within one month from today.

Sreeram.